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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/610,738	07/06/2000	John Crescenti	99CV02	5018
29858	7590	06/23/2005		
BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP 900 THIRD AVENUE NEW YORK, NY 10022				
			EXAMINER RIMELL, SAMUEL G	
			ART UNIT 2165	PAPER NUMBER

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/610,738

Applicant(s)

CRESCENTI ET AL.

Examiner

Sam Rimell

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-17, 20 and 22-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22, 24-29, 37, 39-41, 47, 49-54, 62 and 64-69 is/are allowed.
- 6) ☒ Claim(s) 7-17, 20, 23, 30-36, 38, 45, 46, 48, 55-61 and 63 is/are rejected.
- 7) ☒ Claim(s) 42-44 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
**SAM RIMELL**  
PRIMARY EXAMINER

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 7-9, 11-12, 14-15, 17, 20, 23, 38, 45, 46, 48 and 63 are rejected under 35

U.S.C. 102(e) as being anticipated by Anglin (U. S. Patent 6,026,414).

The reasons for this rejection were set forth in the office action of 8/28/03 and are hereby incorporated by reference.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anglin (U.S. Patent 6,026,414) in view of Morris (U.S. Patent 5,813,017).

The reasons for this rejection were set forth in the office action of 8/28/03 and are hereby incorporated by reference.

Claims 30-33 and 55-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anglin (U.S. Patent 6,026,414) in view of Jander (Launching a Storage Area Net).

The reasons for this rejection were set forth in the office action of 8/28/03 and are hereby incorporated by reference.

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Claims 34-36 and 59-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anglin (U.S. Patent 6,026,414) in view of Saxon (U.S. Patent 5,758,359).

The reasons for this rejection were set forth in the office action of 8/28/03 and are hereby incorporated by reference.

Claims 42-44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 22, 24-29, 37, 39-41, 47, 49-54, 62 and 64-69 are allowed.

#### Remarks

In view of the interview of 11/23/04 and applicant's amendments herein, claims 22, 24-29, 37, 39-41, 47, 49-54, 62 and 64-69 are now indicated as allowable. Claims 42-44 are indicated as containing allowable subject matter, but are dependent claims.

In general, examiner has sustained all of the rejections under 35 USC 102 which were previously applied, several of the rejections under 35 USC 103 which were made pertaining to types of networks and hardware which are clearly taught within the prior art. Upon reconsideration, examiner has sustained the rejection of claim 22, and its analogous claims 37, 47 and 62 upon finding that the feature of communicating with the management component regarding a type of file to backup is in fact fully taught within the Anglin reference.

This office action follows an RCE filing and is made non-final.

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Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (571) 272-4084.

A handwritten signature in black ink, appearing to read 'S. Rimell', with a stylized, cursive script.

Sam Rimell  
Primary Examiner  
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